

Remarks

The Examiner has acknowledged priority in this application and has indicated that the drawings are informal and that new drawings will be required, contingent upon allowance. The Examiner has also reviewed the Election/Restriction Requirement and has noted that the elected special technical features have been incorporated into independent claim 37 and cancelled from former claims 24 through 36.

Claims 24 through 36 stand rejected under 35 USC 101 as being directed to two different and distinct Statutory Classes of an inventive process and machine. The Examiner points out that it is improper for method claims to be dependent upon apparatus claims. The Applicant respectfully disagrees with the position taken by the Examiner. MPEP 608.01(n), page 600-77, first column last paragraph under "III. Infringement Test" reads:

"The fact that the independent and dependent claims are in different statutory classes does not in itself render the latter improper. Thus, if claim 1 recites a specific product, a claim for the method of making the product of claim 1 in a particular manner would be proper dependent since it could not be infringed without infringing claim 1".

The Applicant respectfully submits that method claim 24 is a proper dependent claim, since it further limits new independent claim 47 (which has replaced former independent claim 37). Using the infringement test, it would be impossible to infringe upon the method

8

steps of claim 24 without also infringing upon the dispenser structure of claim 47, since claim 24 incorporates that structure by reference to independent claim 47. Withdrawal of the rejection is therefore respectfully requested.

The Examiner has rejected claims 24 through 46 under 35 USC 112 first paragraph referring to the fact that it is not apparent how a means for defining receptacles performs a U-shaped defining. In responding to this rejection, the Applicant has cancelled claim 37 and replaced it with new independent claim 47, providing clear structural recitations of the receptacle and avoiding the language objected to by the Examiner. Review and acceptance is requested.

Claims 24 through 46 stand rejected under 35 USC 112 second paragraph for the same reasons mentioned in the 35 USC 112 first paragraph rejection and also since there is lack of antecedent basis for the capillaries of those claims. In responding to this rejection, the Applicant has cancelled claim 37 and entered new claim 47 which clearly recites the structure of the capillaries in the preamble. As the Examiner correctly points out, this recitation of the capillaries is used to support functional language in the remaining portion of the claim in order to define the structure of the dispenser with respect to the dimensions and structure of the capillaries, in the sense of 35 USC 112, sixth paragraph. Moreover, all the dependent claims of record similarly recite the capillaries in a manner in which the capillaries are used in functional language to restrict the actual elements claimed. For example, referring to method claim 24, that claim does not claim the capillaries per se rather a method for using a dispenser. Nor do the

apparatus claims which are dependent upon claim 47 attempt to claim the capillaries per se, rather utilize the capillaries in functional language to define the structure of the dispenser. Moreover, the Applicant submits that sufficient antecedent basis is provided for the capillaries in the preamble of new claim 47. Review and acceptance is requested.

Claims 24 through 39 and 43 stand rejected under 35 USC 103(a) as being unpatentable over Mochida in view of Keenan et. al. Claims 37 and 40 through 42 as well as 44 through 46 stand rejected under 35 USC 103(a) as being unpatentable over Sjoboen in view of Keenan et. al.

In responding to these rejections, the Applicant has submitted new claims 47, 48 and 49. In particular, claim 47 clearly recites the structural relation among the elements constituting the dispenser using the capillaries to specify and define the dispenser structure. Each element in the claim cooperates with another recited element and/or is defined relative to the capillaries such that the structural geometry of the elements is much more clearly defined than in former claim 37. New claims 48 and 49 correspond to former claims 38 and 39, which have accordingly been cancelled. Claims 24, 40, 43 and 44 have been amended to be dependent upon new claim 47 and the other dependent claims amended for consistency with the respective intermediate claim or with claim 47.

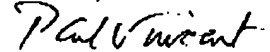
The Applicant believes this amendment to clearly distinguish the invention as claimed from the prior art of record as well as to address all points remaining in this Application which were raised by the

10

Examiner in the instant Office Action. The Applicant therefore requests favorable reconsideration of this application and passage to issuance.

No new matter has been added in this amendment.

Respectfully submitted,



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